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(SPACE BELOW FOR FILING STAMP ONLY)

TIMOTHY J. WHEELER, State Bar No. 85381
MARK T. QUIGLEY, State Bar No. 123228

5 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 STEVEN SMITH, FERNANDEZ SMITH,
12 and THE ESTATE OF BONNIE JOYCE
13 SMITH
14 Plaintiff,

CASE NO.CIV F-02-5431 OWW SMS
Complaint: 4/19/02
District Judge: Oliver W. Wanger
Magistrate Judge: Sandra M. Snyder

15 CONTINENTAL CASUALTY
16 INSURANCE, CO. and DOES 1-100,
17 inclusive
18 Defendants.

[ELECTRONIC FILING]
STIPULATION AND ORDER

Trial Date: November 8, 2005

20 WHEREAS on September 2, 2005, plaintiffs and defendant filed a joint pre-trial
21 statement, and plaintiffs inadvertently omitted a measure of relief sought, which was
22 a claim of pre-judgement interest at seven percent (7%) per year since the accident;
23 and,

24 WHEREAS on September 16, 2005, the Court made a Pre-Trial Order that did not
25 reflect the measure of relief sought by plaintiffs, which was the claim of pre-judgment
26 interest; and,

27 WHEREAS defendant does not agree that plaintiffs are entitled to the relief
28 sought, which is the claim of pre-judgement interest at seven percent (7%) per year

1 since the accident, and reserves the right to object to and argue against plaintiffs'
2 entitlement to such relief; but,

3 WHEREAS both plaintiffs and defendant do agree that the omission of the relief
4 sought was the result of mistake, inadvertence, and excusable neglect, because
5 previous drafts of the pre-trial statement included plaintiffs' claim of pre-judgment
6 interest at seven percent (7%) per year since the accident;

7 IT IS HEREBY STIPULATED that the Pre-Trial Order may be amended to
8 include a claim of relief for pre-judgment interest at seven percent (7%) per year since
9 the accident.

1.1 || SO STIPULATED:

3 | DATED: , 2005

GREENE BROILLET & WHEELER, LLP

/s/
Mark T. Quigley
Attorney for Plaintiffs

8 | DATED: , 2005

BERGER KAHN

/s/
Sherman M. Spitz
Ryan C. Tully
Attorneys for Defendant

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Complaint: 4/19/02
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ORDER

Trial Date: November 8, 2005

Having considered the submitted stipulation and good cause having been shown by plaintiffs.

IT IS SO ORDERED that the Pre-Trial Order be amended to include the measure of relief sought by plaintiffs, which is a claim of pre-judgement interest at seven percent (7%) per year since the accident.

DATED: 10/12/2005 /s/**Oliver W. Wanger**

Hon. Oliver W. Wanger

United States District Court Judge